

FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 28, 2015

ADDENDUM

AGENDA

ACTION ITEMS

- | | | |
|----|-----------------|---|
| 10 | Approved | Approval of a Memorandum of Understanding with the Commonwealth of Virginia and an Agreement with Fairfax 2015, Inc., Regarding Certain Funding to Support the 2015 World Police and Fire Games |
|----|-----------------|---|

ACTION – 10

Approval of a Memorandum of Understanding with the Commonwealth of Virginia and an Agreement with Fairfax 2015, Inc., Regarding Certain Funding to Support the 2015 World Police and Fire Games

ISSUE:

Board of Supervisors' approval of a Memorandum of Understanding ("MOU") accepting one million dollars appropriated from the Commonwealth's General Fund to the County in fiscal year 2016 to support efforts to host the 2015 World Police and Fire Games in Fairfax County. In addition, Board of Supervisors' approval of an Agreement ("Agreement") with Fairfax 2015, Inc., a Virginia non-stock nonprofit corporation ("Fairfax 2015"), to disburse the funds in accordance with the MOU.

RECOMMENDATION:

The County Executive recommends that the Board approve the attached MOU and Agreement and authorize the County Executive to execute the MOU and Agreement on behalf of the Board.

TIMING:

Board action is requested on July 28, 2015. The Commonwealth has approved the MOU and Board action is necessary to commence the reimbursement process. Additionally, Fairfax 2015 has approved the Agreement.

BACKGROUND:

Governor Terence R. McAuliffe recommended and the General Assembly of the Commonwealth of Virginia authorized for appropriation one million dollars from the Commonwealth's General Fund to the County in fiscal year 2016 to support efforts to host the World Police and Fire Games in 2015 per the Virginia Acts of Assembly, Chapter 665, Item 101.N ("Appropriation").

Fairfax 2015 identified certain categories of expenditures, including Games operations, venue rental, transportation and safety, towards which the Appropriation will be used as reimbursement. Fairfax 2015 will provide invoices, proof of payment, and other supporting documentation accounting for these expenditures to the County. County staff will review these documents, and, upon approval, submit them to the Commonwealth for final review and approval along with the completed Reimbursement Request form, which is attached to the MOU as Exhibit A. The Commonwealth will then

Board Agenda Item
July 28, 2015

disburse to the County funds in the amount of one million dollars within thirty (30) days of approval.

The County, through the Agreement with Fairfax 2015, will require Fairfax 2015 to account for the use of the Appropriation funds. The Agreement will further require Fairfax 2015 to maintain any documentation associated with the Appropriation funds for a period of two (2) years after Fairfax 2015 receives the Appropriation funds.

Upon receipt of the Appropriation from the Commonwealth and execution of the Agreement, the County shall disburse one million dollars to Fairfax 2015 to be used to as described above.

FISCAL IMPACT:

The County will include the appropriation of the one million dollars from the Commonwealth in the *FY 2015 Carryover Review* to facilitate disbursing these funds to Fairfax 2015.

ENCLOSED DOCUMENTS:

Attachment 1: Memorandum of Understanding between the Commonwealth of Virginia and Fairfax County Regarding Certain Funding to Support the 2015 World Police and Fire Games

Attachment 2: Agreement between Fairfax County, Virginia and Fairfax 2015, Inc. Regarding Certain Funding to Support the 2015 World Police and Fire Games

STAFF:

Dave Rohrer, Deputy County Executive

Joe Mondoro, Acting CFO/Director, Department of Management and Budget

Gail Langham, Deputy County Attorney

Sarah Hensley, Assistant County Attorney

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COMMONWEALTH OF VIRGINIA AND FAIRFAX COUNTY
REGARDING CERTAIN FUNDING TO SUPPORT
THE 2015 WORLD POLICE AND FIRE GAMES

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective this ____ day of July, 2015 (“Commencement Date”) by and between the Commonwealth of Virginia (“Commonwealth”), located at Patrick Henry Building, 1111 East Broad Street, 3rd Floor, Richmond, Virginia 23219, and Fairfax County, Virginia, located at 12000 Government Center Parkway, Fairfax, Virginia 22035 (“County”) (collectively “Parties”).

RECITALS

WHEREAS, in the summer of 2015, Fairfax County hosted the World Police and Fire Games (the “Games”), which provided recreational Olympic-style sports competitions for police and fire professionals around the world;

WHEREAS, the Parties desired to support this event as it provided a unique opportunity to showcase to the world the community and culture of the Northern Virginia region, highlighted the talents of Virginia’s first responders, increased Northern Virginia businesses’ revenue with the arrival of tens of thousands of athletes and visitors to the region, and provided once in a lifetime entertainment to Virginia residents;

WHEREAS, Governor Terence R. McAuliffe recommended and the General Assembly of the Commonwealth of Virginia authorized for appropriation one million dollars from the Commonwealth’s General Fund to the County in fiscal year 2016 to support efforts to host this international athletic competition in 2015 per the Virginia Acts of Assembly, Chapter 665, Item 101.N.; and

WHEREAS, these funds shall be disbursed by the Parties in accordance with the terms and conditions set forth in this MOU;

NOW, THEREFORE, for adequate and sufficient consideration and the mutual promises hereinafter contained, the parties mutually agree as follows:

1.0 RELATIONSHIP BETWEEN THE PARTIES AND FAIRFAX 2015, INC.

Commonwealth and County officials and other County employees proudly serve on the Board of Directors and Honorary Board of Directors of Fairfax 2015, Inc., a Virginia non-stock, nonprofit corporation (“Fairfax 2015”). Fairfax 2015 was created to oversee all aspects of the Games, including, but not limited to, funding of the Games. Fairfax 2015 is, however, a separate, private, incorporated entity. Neither the Commonwealth nor the County exercises direct control over Fairfax 2015. No agency, partnership, or other joint venture exists between the Parties and Fairfax 2015. The sole parties to this MOU are the Commonwealth and the County.

2.0 **REPRESENTATIONS, RESERVATIONS, OBLIGATIONS AND DUTIES OF THE COMMONWEALTH**

- 2.1 The Commonwealth has appropriated one million dollars from the General Fund to the County in fiscal year 2016 to support efforts to host an international athletic competition, the Games, in 2015 (the “Appropriation”).
- 2.2 The Commonwealth has designated and approved certain categories of expenditures that support positive economic activity in Virginia, made prior to the date of this MOU, and which include Virginia-focused venue rental, Games operations, safety, and transportation towards which the Appropriation will be used as reimbursement (“Prepaid Dedicated Expenditures”). In addition, the County may also seek reimbursement for certain County staff time dedicated to the operation and planning of the Games.
- 2.3 Expenses will be covered on a reimbursement-only policy. The Commonwealth will review supporting invoices and/or other payment remittances for the Prepaid Designated Expenditures. The Appropriation will be reimbursed to the County upon receipt of valid invoices; the County shall use the invoice template, which is attached as Exhibit A. Each invoice from the County must include a description as to how that Prepaid Dedicated Expenditure is related to the Games. Payment by the Commonwealth will be made within 30 days of final approval of all invoices submitted. There will be one final submission to the Commonwealth of all invoices requesting reimbursement.

3.0 **REPRESENTATIONS, RESERVATIONS, OBLIGATIONS AND DUTIES OF THE COUNTY**

- 3.1 The County shall disburse the Appropriation it receives from the Commonwealth to Fairfax 2015 as reimbursement for the Prepaid Dedicated Expenditures. The County intends to enter into an agreement with Fairfax 2015 regarding the Prepaid Dedicated Expenditures. Such agreement shall include a provision requiring Fairfax 2015 to maintain any and all documentation of the Prepaid Dedicated Expenditures for a period of two years after receipt of the disbursement from the County.
- 3.2 To the extent that there are any financial obligations incurred by the County under this MOU, such financial obligations shall be subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.

4.0 **COMPLIANCE WITH LAW**

- 4.1 This MOU shall be governed by the laws (including without limitation those relating to nondiscrimination) of the United States and the Commonwealth of Virginia. It is understood, agreed, and covenanted by and between the Parties that they will comply with, observe, and perform all of the requirements of all of the statutes, ordinances, policies, rules, orders, procedures, and regulations now in effect or hereinafter promulgated whether required by the Federal Government, or the Commonwealth of Virginia.

5.0 **MISCELLANEOUS PROVISIONS**

- 5.1 **Sovereign Immunity.** Nothing in this MOU shall be construed to waive the sovereign immunity of either the County or the Commonwealth. This MOU shall create no right of action or enforcement against the Commonwealth by Fairfax 2015, its event's participants or other related parties.
- 5.2 **Amendment.** This MOU may be amended at any time by mutual agreement of the Parties. In order to be valid and binding, any amendment to this MOU must be in writing and signed by both Parties.
- 5.3 **Entire Agreement.** This MOU constitutes the entire agreement between the Commonwealth and the County with respect to the subject matter of this MOU and supersedes all prior agreements and understandings, written and oral, between them with respect to the subject matter of this MOU.
- 5.4 **Headings.** The headings in this MOU are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this MOU.
- 5.5 **Notice.** Any notice required under this MOU shall be deemed sufficiently given or rendered, if such notice is in writing, and either delivered by hand or mailed by certified or registered mail, return receipt requested as follows:

If to the County:

Attn: Edward L. Long, County Executive
12000 Government Center, Suite 552
Fairfax, Virginia 22035

With a copy to:

David P. Bobzien, County Attorney
12000 Government Center, Suite 549

Fairfax, Virginia 22035

If to the Commonwealth:
Attn: Paul Reagan, Chief of Staff
Office of the Governor
Commonwealth of Virginia
1111 East Broad Street, 3rd Floor
Richmond, Virginia 23219

With a copy to:
Noah Sullivan, Esq., Deputy Counsel
Office of the Governor
Commonwealth of Virginia
1111 East Broad Street, 3rd Floor
Richmond, Virginia 23219

Any notice given hereunder shall be deemed delivered when the return receipt is signed or refusal to accept the notice is noted thereon.

- 5.6 Severability. If any portion of this MOU is found to be void or illegal, the validity or enforceability of any other portion shall not be affected.

SIGNATURE PAGE:

IN WITNESS WHEREOF the parties hereto have affixed their signatures all as of the date first above written.

WITNESS:

FAIRFAX COUNTY:

The Board of Supervisors for Fairfax County
12000 Government Center Parkway
Fairfax, Virginia 22035

By: Edward L. Long
County Executive

WITNESS:

THE COMMONWEALTH OF VIRGINIA:

Office of the Governor
1111 East Broad Street, 3rd Floor
Richmond, Virginia 23219

By: Paul Reagan
Chief of Staff
Office of the Governor

Ch. 665, (Virginia Appropriation Act), Item 101.N. Economic Development Incentive Payment
Reimbursement Request EXHIBIT A

Date		Event Name	
MOU Activity Start Dates:		Name/Title	
MOU Activity End Dates:		Organization	
Request #		Street	
		City, State, Zip	
		Phone & Email	

Narrative Description of Expenditures for which you are seeking reimbursement:

Budget Item	Invoiced Amount ¹	Paid Amount	Amount Seeking Reimbursement			
Services						
Products						
Personnel*						
Fringe*						
Travel						
Supplies/Materials						
Contractual**						
Other						
Total	\$ -	\$ -	\$ -			

This is a request for reimbursement of disbursements made under the provisions of the MOU between the County and the Commonwealth dated July __, 2015. This is to certify that the **expenditures listed in this reimbursement have been paid** in accordance with State and County approved policies and/or regulations. It is further certified that **documentation is retained and available from the County** upon request to support the claim, which is subject to State audit.

Farfax County Official

Date

Contact

Neil Miller, Deputy Secretary

Office of the Secretary of Finance

1111 East Broad Street, Richmond, VA 23219

Fax: 804-692-0676

Tel: 804-786-1148

email: Neil.Miller@governor.virginia.gov

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* For reimbursements containing personnel/fringe requests, the following is necessary:

- payrolls documented in accordance with generally accepted practices with official approval
- timesheets must delineate hours spent and account for the total activity for which the employee is compensated - and include the employee's signature

** For reimbursements containing contractual reimbursement requests, the following is necessary:

- (a) the name of the vendor and (b) the nature of the services or products provided
- (c) the relevance of the services to the Games, and

(d) Whichever of the following is applicable:

- The rate & dates and/or hours worked (if fee is based on such)
- The # of units of service provided, and the beginning and ending dates of overall period of service (if the fee is based on such)
- The basis for determining fee and the beginning and ending dates of the period in which services were provided (if the fee is based on such)

1 - Invoice Amount must meet Budget Narrative above

2 - Personnel or Fringe costs must meet documentation requirements stated above

3 - Staff time requires a record with employee name, cost per hour, record of total hours worked and between what dates

**AGREEMENT BETWEEN FAIRFAX COUNTY, VIRGINIA AND
FAIRFAX 2015, INC. REGARDING CERTAIN FUNDING TO SUPPORT
THE 2015 WORLD POLICE AND FIRE GAMES**

THIS AGREEMENT (“Agreement”) is made effective this ____ day of July, 2015 (“Commencement Date”) by and between Fairfax 2015, Inc., a Virginia non-stock, nonprofit corporation, located at 12000 Government Center Parkway, Suite 251, Fairfax, Virginia 22035 (“Fairfax 2015”), and Fairfax County, Virginia, located at 12000 Government Center Parkway, Fairfax, Virginia 22035 (“County”) (collectively “Parties”).

RECITALS

WHEREAS, in the summer of 2015, Fairfax County hosted the World Police and Fire Games (the “Games”), which provided recreational Olympic-style sports competitions for police and fire professionals around the world; and

WHEREAS, the Parties desired to support this event as it provided a unique opportunity to showcase to the world the community and culture of the Northern Virginia region, highlighted the talents of the Virginia’s first responders, increased Northern Virginia businesses’ revenue with the arrival of tens of thousands of athletes and visitors to the region, and provided once in a lifetime entertainment to Virginia residents; and

WHEREAS, Fairfax 2015 was created to oversee all aspects of the Games including, but not limited to, ensuring that the multi-million dollar fundraising goals necessary to successfully run the Games were met; and

WHEREAS, Governor Terence R. McAuliffe recommended and the General Assembly of the Commonwealth of Virginia authorized for appropriation one million dollars from the Commonwealth’s General Fund to the County in fiscal year 2016 to support efforts to host this international athletic competition in 2015 per the Virginia Acts of Assembly, Chapter 665, Item 101.N.; and

WHEREAS, these funds shall be disbursed by the Commonwealth and the County in accordance with the terms and conditions set forth in the Memorandum of Understanding between the Commonwealth and the County (“MOU”), which document is attached hereto; and

WHEREAS, Fairfax 2015 desires to use the funding to promote the success of the Games in accordance with the restrictions set forth in that MOU;

NOW, THEREFORE, for adequate and sufficient consideration and the mutual promises hereinafter contained, the parties mutually agree as follows:

1.0 **TERM**

The term of this Agreement shall commence on the Commencement Date and shall terminate two years from the date of receipt by Fairfax 2015 of the funds addressed herein.

2.0 **RELATIONSHIP BETWEEN THE COUNTY AND FAIRFAX 2015, INC.**

While County and Commonwealth officials and other County employees proudly serve on the Fairfax 2015 Board of Directors and Honorary Board of Directors, Fairfax 2015 is a separate, private, incorporated entity. As such, Fairfax 2015, and Fairfax 2015 alone, is solely responsible for any contracts to which it has entered and to which it will enter into in the future. The provisions of this Agreement shall not be construed to grant any rights other than as set forth herein. None of the provisions in this Agreement shall be construed to create any agency, partnership, or other joint venture between the County and Fairfax 2015.

3.0 **REPRESENTATIONS, RESERVATIONS, OBLIGATIONS AND DUTIES OF THE COUNTY**

- 3.1 The Commonwealth has appropriated one million dollars to the County from its fiscal year 2016 budget for support of the Games (“Appropriation”). The Commonwealth shall disburse these funds to the County as set forth in the MOU.
- 3.2 Subject to the terms of this Agreement and the MOU, the County shall disburse the Appropriation to Fairfax 2015 within thirty days of the County’s receipt of the same from the Commonwealth. The Appropriation shall only be used to reimburse Fairfax 2015 for the expenditures expressly approved by the Commonwealth pursuant to the MOU.
- 3.3 To the extent that there are any financial obligations incurred by the County under the terms of this Agreement, such financial obligations shall be subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. Nothing in this Agreement shall, however, obligate the County to expend or provide any funds in excess of the amounts received by the County from the Commonwealth.

4.0 **REPRESENTATIONS, RESERVATIONS, OBLIGATIONS AND DUTIES OF FAIRFAX 2015**

- 4.1 Fairfax 2015 shall use the funds it receives from the Appropriation solely as reimbursement for the expenditures expressly approved by the Commonwealth pursuant to the MOU.
- 4.2 To promote transparency and to safeguard the public interest, Fairfax 2015 shall account for the reimbursement of all expenditures made from the Appropriation. Fairfax 2015 shall, therefore, maintain any and all documentation associated with each expenditure for the full term of this Agreement.
- 4.3 At the expiration of this Agreement, Fairfax 2015 shall provide all documentation associated with the Appropriation and all related expenditures to the County.
- 4.4 In addition, Fairfax 2015 shall maintain all records of Fairfax 2015 operations, including but not limited to any and all funding or other financial records, through the expiration of the term of this Agreement, and shall make the same available to the County, its designated auditor, the Commonwealth of Virginia, and/or its designated auditor at any time upon reasonable notice.
- 4.5 Fairfax 2015 shall provide the County and the Commonwealth access to Fairfax 2015 staff and contractors to provide information to ensure compliance with this Agreement and to ensure the County's compliance with the MOU.
- 4.6 Fairfax 2015 shall be responsible for compliance with all applicable laws, including, but not limited to, all applicable Internal Revenue Service regulations and guidelines.

5.0 **INDEMNIFICATION**

- 5.1 Fairfax 2015 hereby agrees to indemnify and hold harmless Fairfax County, its officers, employees, volunteers, and agents, from any and all claims for bodily injuries and personal injuries, death or property damage, liabilities, judgments, including costs or investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals caused, arising out of, or in any way connected with any claims arising from this Agreement.

6.0 COMPLIANCE WITH LAW

- 6.1 This Agreement shall be governed by the laws (including without limitation those relating to nondiscrimination) of the United States, the Commonwealth of Virginia, and the County. It is understood, agreed, and covenanted by and between the Parties that they will comply with, observe, and perform all of the requirements of all of the statutes, ordinances, policies, rules, orders, procedures, and regulations now in effect or hereinafter promulgated whether required by the Federal Government, or the Commonwealth of Virginia.
- 6.2 The County and Fairfax 2015 agree to be bound by the laws of the Commonwealth of Virginia in any proceeding, whether in law or in equity, with respect to any dispute arising under this Agreement. They further agree that the appropriate venue for any dispute arising under this Agreement is Fairfax County Circuit Court.

7.0 DEFAULT AND TERMINATION

- 7.1 If Fairfax 2015 breaches this Agreement and fails to remedy such breach within ten (10) days of written notice stating the basis for such breach, Fairfax 2015 shall be in default of the terms of this Agreement.
- 7.2 Upon such a default, the County may immediately terminate this Agreement upon written notice to Fairfax 2015. In the event of such a termination for default, Fairfax 2015 shall remain liable for all its obligations under this Agreement, and for such losses and damages as the County may sustain as a result of Fairfax 2015's breach thereof.
- 7.3 The County's right to terminate is without prejudice to the remedies at law or in equity which the County, its successors or assigns, may have for the breach of covenants of this Agreement.

8.0 MISCELLANEOUS PROVISIONS

- 8.1 Amendment. This Agreement may be amended at any time by mutual agreement of the Parties. In order to be valid and binding, any amendment to this Agreement must be in writing and signed by both Parties.
- 8.2 Entire Agreement. This Agreement constitutes the entire agreement between the County and Fairfax 2015 with respect to the subject matter of this Agreement and

supersedes all prior agreements and understandings, written and oral, between them with respect to the subject matter of this Agreement.

- 8.3 Headings. The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.
- 8.4 Notice. Any notice required under this Agreement shall be deemed sufficiently given or rendered, if such notice is in writing, and either delivered by hand or mailed by certified or registered mail, return receipt requested as follows:

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12000 Government Center, Suite 552
Fairfax, Virginia 22035

With a copy to:

David P. Bobzien, County Attorney
12000 Government Center, Suite 549
Fairfax, Virginia 22035

If to Fairfax 2015:

Attn: William B. Knight, President & CEO
Fairfax 2015, Inc.
12000 Government Center Parkway, Suite 251
Fairfax, Virginia 22035

Any notice given hereunder shall be deemed delivered when the return receipt is signed or refusal to accept the notice is noted thereon.

- 8.5 Severability. If any portion of this Agreement is found to be void or illegal, the validity or enforceability of any other portion shall not be affected.

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By: Edward L. Long
County Executive

WITNESS:

FAIRFAX 2015 INC.:

12000 Government Center Parkway, Suite 251
Fairfax, Virginia 22035

By: William B. Knight
President & CEO